All Seasons Construction, Inc. *and* United Brotherhood of Carpenters and Joiners of America, Local Union No. 764, AFL–CIO. Cases 15–CA–14748, 15–CA–14793, 15–CA–14816, and 15–CA–15156

November 8, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND WALSH

On June 29, 2001, Administrative Law Judge Jane Vandeventer issued the attached decision. The General Counsel filed exceptions.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified below.[1]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, All Seasons Construction, Inc., Shreveport, Louisiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified below.

1. Insert the following as paragraph 2(f) and reletter the subsequent paragraphs.

"(f) Within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful refusal to hire or to consider for hire Bradley Branch, Paul Cirulli, John Creech, Paul Gates, Randolph Mills, Roy Myers, Willie Rice, Herbert Rogers, and Sammy Watkins, and within 3 days thereafter notify the employees in writing that this has been done and that the actions will not be used against them in any way."

2. Substitute the following for relettered paragraph 2(g).

"(g) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order."

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights:

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT question you about your union affiliation or sentiments.

WE WILL NOT tell you that you may not talk about the Union on company time.

WE WILL NOT tell you that we don't want union employees working for us and that we will be hard on union employees.

WE WILL NOT tell you that you will not get a raise because of your union activities or your protected concerted activity.

WE WILL NOT subcontract our work to retaliate against employees who have engaged in union or protected concerted activity.

WE WILL NOT threaten you with reprisals for engaging in union or concerted protected activities.

WE WILL NOT discipline, suspend, or lay you off because you have engaged in union or other protected concerted activities.

WE WILL NOT refuse to consider you for hire or refuse to hire you because of the Union or your union affiliation or your protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

WE WILL offer employment to Roy Myers, Paul Cirulli, Randolph Mills, Herbert Rogers, and Sammy

[1] The judge's recommended Order shall be modified to include language ordering that the Respondent expunge from its files any reference to the unlawful refusal to hire or consider for hire Bradley Branch, Paul Cirulli, John Creech, Paul Gates, Randolph Mills, Roy Myers, Willie Rice, Herbert Rogers, and Sammy Watkins. See *Hartman Bros. Heating & Air-Conditioning*, 332 NLRB 1161 (2000). We shall further modify the judge's recommended Order in accordance with our recent decision in *Ferguson Electric Co.,* 335 NLRB 142 (2001).

Watkins, and WE WILL make them whole for any loss of pay or other benefits they may have suffered because of our unlawful refusal to consider them for hire or to hire them.

WE WILL offer reinstatement to Ron Madewell, Jack Wood, Sims Gafford, and Harold Cotton, and WE WILL make them whole for any loss of pay or other benefits they may have suffered because of our unlawful refusal to consider them for hire or to hire them.

WE WILL remove from our files any reference to the unlawful layoffs, discipline, and suspension of Ron Madewell, Jack Wood, Sims Gafford, and Harold Cotton, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the actions will not be used against them in any way.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful refusal to hire or to consider for hire of Bradley Branch, Paul Cirulli, John Creech, Paul Gates, Randolph Mills, Roy Myers, Willie Rice, Herbert Rogers, and Sammy Watkins, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the actions will not be used against them in any way.

WE WILL consider for future employment Roy Myers, Paul Cirulli, John Creech, Willie Rice, Bradley Branch, and Paul Gates, in accord with nondiscriminatory criteria, and notify them and the Union and the Regional Director for Region 15 of future openings in positions for which the discriminatees applied or substantially equivalent positions.

ALL SEASONS CONSTRUCTION, INC.

Charles R. Rogers, Esq., for the General Counsel.
Edward L. Angel, for the Respondent.

DECISION

STATEMENT OF THE CASE

JANE VANDEVENTER, Administrative Law Judge. This case was tried on January 23 and 24, 2001, in Shreveport, Louisiana. The consolidated complaint alleges Respondent violated Section 8(a)(1) of the Act by interrogating employees about their union affiliation, threatening employees with loss of wage increases and other unspecified reprisals because of their union activities, and announcing and enforcing discriminatory no-solicitation and no-talking rules. The complaint also alleges Respondent violated Section 8(a)(3) of the Act by reprimanding an employee, sending an employee home early, laying off four employees, refusing to hire six employees, and refusing to consider for hire six employees, all because of their union and protected concerted activities. The complaint further alleges that an informal settlement agreement in the case, previously entered into, was set aside by the Regional Director for Region 15 because of Respondent's failure to comply with the settlement agreement. The Respondent filed an answer denying the essential allegations in the complaint. After the conclusion of the hearing the parties filed briefs, which I have read. The General Counsel also filed a posthearing motion to admit an additional answer that had been filed by Respondent. This motion was made orally at trial and was not opposed by Respondent. I designate the late-filed exhibit as General Counsel's Exhibit 31, and admit it into evidence.

Based on the testimony of the witnesses, including particularly my observation of their demeanor while testifying, the documentary evidence, and the entire record, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a corporation with an office and place of business in Shreveport, Louisiana, where it is engaged in the construction industry as a general contractor. During a representative 1-year period, Respondent purchased and received at its Louisiana jobsites goods and materials valued in excess of $50,000 directly from points outside the State of Louisiana. Accordingly, I find, as Respondent admits, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Charging Party (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. UNFAIR LABOR PRACTICES

A. The Facts

Respondent's employees are not represented by a union, although a related company which performs sheet metal contracting work has an agreement with a sheet metal workers' union. Edward L. Angel is an owner and the president of Respondent, and has been since its founding in 1984. Alfred J. Loga, commonly called "A.J." Loga, was a superintendent for Respondent at the time of the events involved here. Both are admitted supervisors.

In November and December 1997, Respondent was working on a jobsite at the Shreveport Municipal Auditorium. The job involved, among other things, trim carpentry work. In mid-November 1997, Angel had sought a bid from a subcontractor called BCI for the trim carpentry portion of the job. John Beene, president of BCI, testified that he bid on the job, but was told by Angel that his bid was too high, and that Respondent was going to do the trim work itself.

There were about five journeyman carpenters on the Municipal Auditorium jobsite in November 1997, among whom were Jack Wood, Ron Madewell, Sims Gafford, and Harold Cotton. Jack Wood and Ron Madewell were members of the Charging Party Union (the Union), but when they had been hired by Angel in mid-November, they had made no mention of their union affiliation, nor had they displayed any union insignia. About 2 weeks later, just after Thanksgiving, Wood and Madewell began to wear union logos and slogans on their hats and shirts. They also began to hand out union literature before work. In 1997, December 1 was the first Monday after Thanksgiving, and I find that the two employees began

showing their union logos and distributing literature by that date.

Within the next few days, Wood brought a petition with him to the jobsite, and solicited other employees' signatures on the petition. The one-page document petitioned Respondent for increased wages, as well as retirement and health and welfare benefits. About five employees signed the petition before Wood gave it to Superintendent Loga at the end of the day. Respondent admitted receiving the petition. While Wood could not recall the exact date of the submission of the petition, and testified that it was about December 4, 1997, I find that it was submitted to Respondent sometime between December 2 and 4, 1997.

On December 2, 1997, a group of applicants wearing hats and shirts bearing the name of the Union went to Respondent's office and handed in employment applications. The applicants who visited the office were Roy Myers, Paul Cirulli, Herbert Rogers, Michael Kleyla, and Randolph Mills. Myers is the business manager of the Union. They also had with them an application filled out by Sam Watkins. Myers handed the six applications to the secretary. Angel appeared in the office at about that time and, when told that the five individuals were there to apply for jobs, immediately told them to leave. Only after Myers repeated that the applicants wanted to apply for jobs did Angel say that he was not hiring. Myers asked some additional questions, such as how long Respondent retains applications. Angel said he retains them for 90 days. Myers also asked whether Respondent transfers employees from one jobsite to another, and Angel answered, "Sometimes." Copies of the applications reflecting the applicants' qualifications were introduced into evidence for all the applicants except Michael Kleyla.

The General Counsel introduced other evidence, which was at odds with Angel's claim to the applicants that he was not hiring. Wood had been told by Angel at his initial interview that Respondent was interested in hiring at least two more carpenters. Employee Troy Creech was hired by Respondent on November 27, 1997, and was told by his superintendent, Don Whitten, on about December 8, 1997, that Respondent needed more carpenters. Documentary evidence shows that Respondent hired eight additional carpenters between December 1, 1997, and April 6, 1998.

Within a few days, on December 4, 1997, the Union sent a letter to Respondent stating that some of its employees had expressed interest in having the Union represent them, and informing Respondent that employees Wood and Madewell were members of the Union.

John Beene of BCI testified that he was contacted again by Respondent on about the December 1, 1997, and asked to bid the remainder of the trim work. BCI's bid is dated December 5, 1997. BCI took over the remainder of the trim work on about December 10, 1997, and finished it in about 3 or 4 weeks.

On the morning of December 10, 1997, employees were given their paychecks, which included a letter written by Angel. The letter, dated December 8, 1997, acknowledged receipt of the petition, and denied its requests. On the same day, A. J. Loga talked with the employees about the petition and their request for a raise. Several employees testified about this conversation, and a tape recording of the conversation made by Jack Wood was also introduced into evidence. Loga told the employees that he would have gone to Angel on their behalf about a raise, but that he would not do so now, because Angel was so angry about the employees' petition, the letter from the Union, and the six union applicants visiting his office. He told the employees that Angel had described himself as reacting like a mule. Loga told the employees they should "forget" wage or benefit increases. Loga also informed the employees that the rest of the trim carpentry on their job was going to be subcontracted. Although Loga stated that it had nothing to do with the Union, he mentioned the employees' protected activities and union activities every time he mentioned the subcontract.

After several minutes, Angel joined the conversation. In reference to the employees' petition, Angel said, "Nobody—read my lips—nobody is going to demand or dictate to me what I will and will not do. This is my company, okay? I sign the checks, okay?" Angel went on to complain about being "blind-sided" and stated, after referring to the letter from the Union and the employees' petition, that, "We have a whole new set of ground rules now." He informed the employees their work was going to be subcontracted, and told them that he had to meet a schedule for the work, but at the same time said that it was "unfortunate," but "you guys came up with this petition," and referred to the letter from the Union. Angel also complained about the six applicants from the Union having come to Respondent's office. When one employee, Cotton, disclaimed his prior participation in the petition, apologized for doing it, and tacitly asking for a raise, Angel immediately said, "you are going to get another pay raise." Angel also told employees that they could only talk about the Union "on your own time" and not "on my time." He complained about the six union-identified applicants who had come to Respondent's office on December 2. Finally, he asked the employees generally, "Who is the two here already members of the Union?" Wood and Madewell each said, "I am." Angel did not testify about these events and did not deny any of the statements attributed to him by other witnesses. In response to questions from counsel for the Acting General Counsel, who called Angel as a witness, Angel admitted that Respondent's policy permits employees to talk about anything except the Union while they are working, so long as it does not disrupt their work.

On December 17, 1997, three employees, Jack Wood, Sims Gafford, and Harold Cotton, were laid off. Loga informed them that Respondent was "running out of work." The documentary evidence shows, however, that during December 1997, Respondent hired three new carpenters, and hired five more new carpenters between January 1 and April 6, 1998. Employee Troy Creech was asked on December 8, 1997, by one of Respondent's superintendents, Don Whitten, if he knew any carpenters who wanted to go to work. Creech recommended Jeff Miller, who was hired the next day. Both these employees testified, and stated that they wore no union insignia on their clothing when they were hired by Respondent.

Employee William Hall also testified that between Thanksgiving and Christmas, he was working for Respondent on a jobsite superintended by Ed Boze. On a Wednesday morning in December 1997, Boze returned to the jobsite after a supervisor's meeting the previous night at Respondent's office. Boze stated that Angel had told the superintendents to make it "hard" on union hands, because he didn't want them on the jobs. Angel did not testify on this point.

Employee Troy Creech worked for Respondent from late November 1997 through March 11, 1998, when he left the job voluntarily because the jobsite was shut down for a few days. About 10 days after he left Respondent's employment, he saw his former foreman, Danny Free, at the grocery store. Free asked Creech if he was in the Union, and Creech said that he was. When Creech went to see Free the next day at the jobsite and asked if he could be hired back by Respondent, Free told him that he would not be hired back. Also during the same month, Foreman Free told employee William Hall that Angel had said that he didn't want union hands on the job, and to make it hard on them. Free did not testify.[1]

Employee Ron Madewell had continued to work for Respondent at various jobsites, being transferred to the "Burn building" jobsite and then back to the Municipal Auditorium. During April 1998, he was again working at the Municipal Auditorium jobsite under the superintendence of A. J. Loga. Beginning on about April 12, 1998, Loga assigned Madewell to duties normally performed by laborers rather than carpenters, the breaking up and shoveling up of concrete. About mid-April, Loga made several statements to Madewell encouraging him to quit his job. On about April 15, 1998, Madewell was getting a drink of water at the water cooler along with another employee. He testified that A. J. Loga called out to him that he was "talking union business on the job," and threatened to write him up for it. Madewell testified that he received no written reprimand, but he was sent home for the remainder of the day. According to Madewell's testimony, he was breaking up and moving concrete on that day, and he had about 3 or 4 hours more work at the time he was sent home. Loga later wrote a letter to Angel which he testified was the written reprimand to Madewell. This document states that Madewell was asking questions and talking about the Union with other employees on company time. The letter also refers to Madewell being "insubordinate" on about April 12, 1998, over the job of shoveling concrete to which he had been assigned. Angel stated in testimony that the architect shut the job down 1 day because of a failed soil compaction test, but he could not recall whether that was the day on which Madewell was sent home or not. Madewell was at home for about a day and a half before he was called back to work.

Some days later, on April 28, 1998, Madewell was laid off by Loga, who told him that there was not enough work for him, but that he would be called back to work. Madewell never was recalled to work, however. Madewell testified that there was about 3 or 4 weeks' work left at the jobsite where he was working. Respondent's document concerning his layoff states as the reason for his layoff, "lack of materials." Loga testified that Madewell was laid off because he was "not working," and at another point stated that Madewell lacked the ability to do the work, which remained. Loga also stated that Madewell's "complaining" affected employee morale, and that this was a part of the reason he was sent home and laid off. Loga admitted that he knew that Madewell had discussed the Union with at least one employee, Gerald Phillips.

Employee Rick Clem was hired by Respondent in late October 1998 as a journeyman carpenter. When Clem was hired, Angel told him that Respondent was "always looking for employees." On November 4, 1997, in response to a question from Clem, Angel said that he was "still looking" for employees. About a week after Clem's hire, on November 6, 1998, six applicants wearing union insignia on their hats and jackets came to Respondent's office and asked to fill out applications. They were Roy Myers, John Creech, Willie Rice, Paul Cirulli, Bradley Branch, and Paul Gates. A secretary and Office Manager Mary Ann Croft were present in the office. The secretary told the six applicants she didn't have enough applications, and that Respondent was not accepting applications. Office Manager Croft told them to leave the office or she would call the police. The applicants asked Croft if all applicants had to wait outside. They went outside into the parking lot. About that time, Angel came into the parking lot and told the applicants to leave Respondent's property, that Respondent was not accepting applications and that he didn't know when they would be accepting them. Myers attempted to give Angel a letter informing him that employee Rick Clem was a union member and would be engaging in organizing activities among the employees. Angel took the paper and immediately dropped it, but may have picked it up again after the applicants left. Myers and Cirulli testified that the paper was gone from the parking lot where Angel had dropped it a short time later when they drove by to check on the letter. The qualifications of all six applicants as journeyman carpenters were testified to by Myers, who is familiar with their experience and training.

Also on November 6, 1998, Rick Clem was working at the Bossier City Civic Center jobsite. Angel came to the jobsite and spoke to him. Angel said that "a pack of thugs" had come to the office to apply for jobs. Angel told Clem that the supervisors would be watching him, and that he should make sure he was doing his job today. He said that he had not asked Clem about the Union, and he didn't care, but that Clem was not allowed to talk about the Union "on company time." Angel did not testify concerning these events.

The informal settlement agreement was introduced into evidence and, despite Respondent's denial of the complaint paragraph alleging its execution, Angel did not deny that he had entered into the informal settlement agreement. He also stated at the hearing that he had not paid the backpay, which was a part of the settlement agreement.

[1] The evidence presented by the employee witnesses to the effect that Boze and Free act as supervisors, and possess supervisory indicia such as the power to hire, fire, assign work, discipline, and other such powers, was uncontradicted in this record. I find that they are supervisors of Respondent.

B. Discussion and Analysis

1. The 8(a)(1) allegations

The events on December 10, 1997, gave rise to a number of allegations of conduct, which violates Section 8(a)(1) of the Act. Loga's statements to employees to the effect that they would not be getting any raises or improvements in benefits now that their union and protected concerted activities had made Angel declare himself a "mule," was clearly coercive, as it identified these protected activities as the reason for the denial. Angel said on the same day that because of the union and protected concerted activities, Respondent had a "whole new set of ground rules." This statement impliedly threatened employees with unspecified reprisals. One of the reprisals was actually specified, i.e., the subcontracting of the employees' work. Angel complained about the employees' "unfortunate" signing of their petition in the same breath as he told them that he had subcontracted out the rest of the trim work, which they had formerly been told that they would do. Angel also told the employees that they could talk about the Union "on your time," but "not on my time." In testimony, Angel admitted that Respondent prohibits only union-related conversations during work, not any other type of conversations. This is a discriminatory rule. *Opryland Hotel*, 323 NLRB 723, 729 (1997). Finally, Angel's asking all the employees which ones were members of the Union is coercive. Leaving aside the question of whether it was coercive as to Wood and Madewell, who had identified themselves as union "salts" and who did so again in response to Angel's question, the query was certainly coercive as to the other employees present, none of whom had disclosed their feelings about the Union. *Rossmore House*, 269 NLRB 1176 (1984).

Superintendent Boze in December 1997 and Foreman Free in March 1998, both relayed to employees Angel's instructions to his supervisors to make it "hard on" union hands because he didn't want them on Respondent's jobsite. These statements were not denied, and are clearly coercive. Finally, Angel's comments to employee Rick Clem on November 6, 1998, both his reiteration of the unlawful no-union-talking rule, and his admonition to Clem that he would be watched carefully, were coercive and violated Section 8(a)(1) of the Act.[2]

2. The 8(a)(3) allegations

The Board recently held in *FES*, 331 NLRB 9 (2000), that in order to establish a prima facie case of unlawful refusal to hire, the General Counsel must establish the following elements: "(1) that the respondent was hiring, or had concrete plans to hire, at the time of the alleged unlawful conduct; (2) that the applicants had experience or training relevant to the announced or generally known requirements of the positions for hire, and in the alternative, that the employer has not adhered uniformly to such requirements, or that the requirements were themselves pretextual or were applied as a pretext for discrimination; and (3) that antiunion animus contributed to the decision not to hire the applicants." Id. at 12 (footnotes omitted).

With respect to an alleged discriminatory refusal to consider for hire, *FES* provides that it is the General Counsel's burden to establish: "(1) that the respondent excluded applicants from a hiring process; and (2) that antiunion animus contributed to the decision not to consider the applicants for employment." Id. at 15. Once these elements have been established, the burden shifts to the Respondent to show that it would not have hired the applicants, or considered them for hire, even in the absence of their union activity or affiliation.

Applying the first of these tests to Respondent's failure to hire the employees who applied for work on December 2, 1997, the General Counsel has clearly established a prima facie case with respect to five of the six applicants. The record reflects that Respondent intended to hire and did hire eight carpenters within approximately the succeeding 4 months. In addition, there is uncontradicted evidence of numerous statements by Angel and other supervisors that Respondent needed additional carpenters and was always looking for employees. While the General Counsel introduced evidence concerning the qualifications of five of the six applicants, there is no record evidence regarding the qualifications of applicant Michael Kleyla for the position of journeyman carpenter. I will therefore recommend that dismissal of the portion of the complaint, which alleges that Respondent violated Section 8(a)(3) by refusing to hire applicant Kleyla on December 2, 1997.

Finally, the General Counsel has established beyond a doubt that Respondent, specifically Angel, harbored substantial animus against the Union, employees associated with the Union, as well as employees who sought to exercise their protected rights, as did the employees who signed a petition and handbilled in support of the Union in early December 1997. Angel ordered the union identified applicants out of his office almost before he knew why they had come to the office. A few days later at the Municipal Auditorium jobsite, Loga informed the employees that Angel had been very angry and upset over their petition, the Union's letter, and the union-identified job applicants coming to his office to apply for work. Both he and Angel made coercive statements to them that day. These actions by Respondent were an immediate and unmistakable reaction to the employees' union and protected concerted activities, and show an unmistakable connection between Respondent's animus and its refusal to hire the five applicants.

Respondent offered no explanation for its refusal to hire the December 2, 1997 applicants. I find that it has not rebutted the prima facie case established by the General Counsel, and conclude that Respondent violated Section 8(a)(3) by refusing to hire the five applicants.

Likewise, Respondent's belated decision to subcontract the remaining trim work was undertaken only after the employees at the Municipal Auditorium had engaged in the protected concerted activity of signing and submitting the petition con-

[2] While Angel's remarks to Clem give the impression that he will be kept under surveillance, this was not alleged by the General Counsel as a violation of Sec. 8(a)(1) of the Act, and hence, I do not include it in my findings, conclusions, or order. See, e.g., *Fitel/Lucent Technologies*, 326 NLRB 46, 54 (1998).

cerning wages and benefits, and some of them had shown their pro-union sentiments. Respondent's decision was a complete about-face from its decision of only 2 weeks earlier *not* to subcontract the trim work. In addition, the decision was made almost immediately after Respondent was made aware of the presence of at least two union affiliated employees, Wood and Madewell, on that jobsite, had received a letter from the Union, had been petitioned by the employees on the jobsite, and had received applications from six openly union supporters. While Beene's recollection of Respondent's call from Loga requesting that he bid the remaining trip work on the Municipal Auditorium job was that it occurred *about* the December 1, I find that the document he produced in response to the call, his December 5, 1997 bid, was the most reliable evidence of the timing of Loga's call to him. I find, therefore, that Loga called Beene on December 4, 1997, and asked him for a bid on the remaining trim work.

Respondent gave as reasons for its decision to subcontract the remaining trim work was that it was running out of time to complete the work, and had neither the time nor tools necessary to perform the work. There was no evidence that these conditions had changed since Respondent turned down Beene's bid in mid-November 1997. The total failure to explain its sudden about face regarding subcontracting, the timing of Respondent's decision to subcontract, coming as it did immediately after the employees' protected concerted and union activities became known, and the linkage of the decision with those activities by both Loga and Angel during their December 10, 1997 remarks, are all convincing evidence that Respondent's real reason for subcontracting the remaining trim work was the union and protected concerted activities of the employees. Both that decision and the resulting layoffs of Wood, Gafford, and Sims were undertaken in retaliation for those union and protected activities, and violate Section 8(a)(3) and (1) of the Act. *Starcon, Inc.*, 323 NLRB 977, 983 (1997); *Automatic Sprinkler Corp.*, 319 NLRB 401, 402 (1995).

A. J. Loga's threat to discipline Ron Madewell on April 15, 1998, for "talking union" to another employee is a violation of Section 8(a)(1), as it was made pursuant to Respondent's unlawful no-union-talk rule. His action in sending Madewell home from work on the same day is similarly a violation of Section 8(a)(3). Loga sent Madewell home primarily because he was talking about the Union to other employees and otherwise talking with employees about the job. Loga's testimony and letter to Angel which he characterized as a reprimand demonstrate that this was the primary reason. Loga's other asserted reasons were contradicted by Madewell's testimony. I credit Madewell over Loga concerning the events of April 1998. Loga's April 15, 1998 reprimand letter concerning Madewell, springing from these same causes, is also a violation of Section 8(a)(3).

Respondent's layoff of Ron Madewell, occurring less than 2 weeks after the unlawful threat, reprimand, and letter, is connected by timing to those events. In addition, Respondent has proffered four or five shifting and contradictory reasons for his layoff, some of which are patently false, such as the claim that there was not enough work for Madewell. Respondent's animus against union supporters is apparent. Taking account of all these factors, it is clear that the layoff of Ron Madewell on April 28, 1998, was done because of his union activities, and therefore violates Section 8(a)(3).

On November 6, 1998, Respondent refused even to accept applications from six applicants wearing hats and jackets that identified them as being affiliated with the Union. In addition, they were promptly ordered out of the office, with the additional threat of the police being called. When Angel spoke to them a few minutes later, he furiously told them that he was not hiring, and later that day, spoke of them as "a pack of thugs" to an employee, Rick Clem. In the face of undisputed evidence that Angel had stated to Clem just a few days earlier that he was looking for carpenters, his ejection of them from his office and parking lot, and his statement that he was not hiring must be seen as false and as an expression of antiunion animus. The General Counsel has established the elements of a prima facie case with respect to the six applicants for employment, and Respondent has proffered no defense. I find, therefore, that Respondent has violated Section 8(a)(1) and (3) by refusing to consider these six employees for hire.

Finally, I find that the Regional Director properly set aside the informal settlement agreement dated June 2, 2000. Although Respondent denied its execution and approval, the copy of the settlement agreement in this record show that it was indeed signed by Angel and approved by the Regional Director. Similarly, although Respondent denied that it had failed to abide by the terms of the settlement agreement, Angel stated on the record that Respondent had not paid any of the backpay and interest amounts, which were a part of the settlement agreement. In these circumstances, there can be no doubt that the Regional Director acted properly in setting the settlement agreement aside.

CONCLUSIONS OF LAW

1. By interrogating employees about their union membership, imposing a discriminatory no-talking rule on employees, telling employees that it does not want union employees working for it, threatening to make it hard on union adherents, threatening to discipline employees because of their union activities, threatening employees with unspecified reprisals, and telling employees that there will be no wage increases because of their union and protected concerted activities, Respondent has violated Section 8(a)(1) of the Act.

2. By subcontracting their work and laying off Jack Wood, Sims Gafford, and Harold Cotton, Respondent has violated Section 8(a)(3) and (1) of the Act.

3. By refusing to hire or consider for hire Roy Myers, Paul Cirulli, Randolph Mills, Herbert Rogers, and Sammy Watkins, Respondent has violated Section 8(a)(3) and (1) of the Act.

4. By disciplining, suspending, and laying off Ron Madewell, Respondent has violated Section 8(a)(3) and (1) of the Act.

5. By refusing to consider for hire Roy Myers, Paul Cirulli, John Creech, Willie Rice, Bradley Branch, and Paul Gates, Respondent has violated Section 8(a)(3) and (1) of the Act.

6. The violations set forth above are unfair labor practices affecting commerce within the meaning of the Act.

7. The Regional Director properly set aside the informal settlement agreement dated June 2, 2000.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act.

I shall recommend that Respondent be ordered to consider for future employment Roy Myers, Paul Cirulli, John Creech, Willie Rice, Bradley Branch, and Paul Gates in accord with nondiscriminatory criteria, and notify them and the Union and the Regional Director for Region 15 of future openings in positions for which the discriminatees applied or substantially equivalent positions. If it is shown at a compliance stage of this proceeding that, but for the failure to consider them, they would have been selected for any other openings, I shall recommend that Respondent be ordered to hire them for any such positions and make them whole, with interest, as set forth below, for any loss of earnings or benefits.

I shall further recommend that Respondent be ordered to offer employment to Roy Myers, Paul Cirulli, Randolph Mills, Herbert Rogers, and Sammy Watkins, and reinstatement to Jack Wood, Sims Gafford, Harold Cotton, and Ron Madewell. I shall also recommend that Respondent be ordered to remove from the employment records of Ron Madewell, Jack Wood, Sims Gafford, and Harold Cotton any notations relating to the unlawful actions taken against them and to make them whole for any loss of earnings or benefits they may have suffered due to the unlawful actions taken against them, in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in accordance with *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, All Seasons Construction, Inc., Shreveport, Louisiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees about their union membership, imposing a discriminatory no-talking rule on employees, telling employees that it does not want union employees working for it, threatening to make it hard on union adherents, threatening to discipline employees because of their union activities, threatening employees with unspecified reprisals, and telling employees that there will be no wage increases because of their union and protected concerted activities.

(b) Laying off employees, subcontracting their work, refusing to hire applicants or consider them for hire, disciplining, suspending, and laying off employees because of their union or protected concerted activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer employment to Roy Myers, Paul Cirulli, Randolph Mills, Herbert Rogers, and Sammy Watkins.

(b) Consider for future employment Roy Myers, Paul Cirulli, John Creech, Willie Rice, Bradley Branch, and Paul Gates in accord with nondiscriminatory criteria, and notify them and the Union and the Regional Director for Region 15 of future openings in positions for which the discriminatees applied or substantially equivalent positions.

(c) Within 14 days from the date of this Order, offer Ron Madewell, Jack Wood, Sims Gafford, and Harold Cotton full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(d) Make Roy Myers, Paul Cirulli, Randolph Mills, Herbert Rogers, Sammy Watkins, Ron Madewell, Jack Wood, Sims Gafford, and Harold Cotton whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful layoffs, discipline, and suspension of Ron Madewell, Jack Wood, Sims Gafford, and Harold Cotton, and within 3 days thereafter notify the employees in writing that this has been done and that the actions will not be used against them in any way.

(f) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its Shreveport, Louisiana, location copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other ma-

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice "Posted by Order of the National Labor Relations Board'' shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

terial. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 1, 1997.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.